deceased. The earlier heated exchange of words took place before lunch two or three hours earlier. There was no apparent motive or reason for the stabbing. He not only stabbed his brother but also stabbed his sister; he stabbed her three times. When he stabbed her he did not utter any words. There was no heated exchange of words between him and his sister that morning. Lastly, after stabbing his brother and sister he let them leave the flat. He did not hide the knife or wipe all the blood on him; he did not run away. When he met his sister on the ninth floor, he merely asked where his brother was and then took the flight of stairs and walked down. All these seem extremely irrational.

At the time when he stabbed his brother and sister he must have been very heavily intoxicated; he must then be in an advanced state of coma I. We accept the evidence of the accused that after the stabbing he went to the kitchen, washed his head under the tap and then went out of the flat and met his sister on the ninth floor. When PC Lim and SC Mohamed Sani bin Abdul Rahim found him on the third floor, he was wet. At that point of time his condition must be on the verge of reaching coma II; he was then vomiting and could not walk steadily or talk, and when he was carried to the void deck on the ground floor he was unconscious – he was then at least in coma II. And when he was brought to the Singapore General Hospital, Dr Henry found him in coma III.

Having considered all the evidence before us, we are satisfied on the balance of probabilities that the accused at the material time when he stabbed his brother and sister was suffering from delirium due to acute alcoholic intoxication and that by reason of the intoxication he was insane at the time of stabbing and did not know what he was doing. In view of this, it is unnecessary for us to consider the other defences, namely: (i) that the accused by reason of his intoxication did not form the specific intention of committing the offence on which he was charged, and (ii) that the accused was suffering from an abnormality of mind induced by disease or injury which substantially impaired his mental responsibility for his act in causing the death of the deceased.

Accordingly, pursuant to s 313 of the Criminal Procedure Code, we find that the accused did on 18 February 1984 at about 2.50 pm at Blk 118, Bukit Merah View, #10-99, Singapore, stab and cause the death of his brother, Tan Kah Kuan, but he was, by reason of unsoundness of mind at that time, incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. We order that the accused, Tan Ho Teck, be kept in safe custody pending the order of the Minister under s 314 of the Criminal Procedure Code.

Order accordingly.

Solicitors: *Assomull & Partners.*

Reported by *Ng Sheau Jiuan*

BRUNEI REPORTS

Carabao Exports Pty Ltd v Online Management Consultants Sdn Bhd & Ors

HIGH COURT (BANDAR SERI BEGAWAN) – CIVIL SUIT NO 331 OF 1987
GODFREY J
28 JUNE 1988

Civil Procedure – Judgment on admissions – Application for – Whether court can give judgment on alleged admission not admitted to by defendant – Requirement of clear admission of all facts, not evidence of some facts – Principles applicable

The plaintiff entered into a contract with the defendants for the sale of cattle. A dispute arose between the parties and the plaintiff filed the present application for judgment on admissions. The plaintiff contended that as it had already obtained judgment against the first defendants, the court should treat the third defendant as having admitted the plaintiff's claim as the third defendant was in partnership with the first defendants. However, this allegation of partnership was not accepted by the third defendant. The second contention of the plaintiff is that since the third defendant had collected the cattle without tendering the shipping documents to the shipping agents and there was an admission in the form of an indemnity given by the third defendant to the shipping agents, the plaintiff's application for judgment should be allowed.

Held, dismissing the application: (1)The court cannot try on this interlocutory application the question of partnership or no partnership and it is impossible for the court to give judgment on the alleged admission based on this ground.

(2) The instruments of delivery evidence receipt by the consignee, whose signature appears thereon, of the cattle but in no way do they constitute the sort of admission on which a judgment on admissions can be obtained.

(3) The admission must be a clear admission of all, and not simply evidence of some, of the facts upon which the plaintiff relies to establish his cause of action. In the circumstances of this case, there is no such admission.

Case referred to
1 *Ellis* v *Allen* [1914] 1 Ch 904 (refd)

David Clidero for the plaintiff.
Norila Abu Hassan for the second and third defendants.

Cur Adv Vult

Godfrey J: This is an application for judgment on admissions. The plaintiff, Carabao Exports Pty Ltd, entered into a contract for the sale of cattle. The buyer (or one of the buyers) was one Hj Mohamad bin Hj Bakar, ('Hj Mohamad') who is named as the third defendant in the action and who trades as sole proprietor of Sharikat Termaju Abadi ('STA'), which is named as the second defendant in the action. STA is sued as a firm but the name of a person who is a party in more than one capacity must be inserted only once on the record: see the note in *The Supreme Court Practice 1988*, 15/1/4. Since the second and third defendants are the same person, the second defendant ought to be deleted and the third

defendant should become the second defendant. He should be described in the statement of claim as trading under the style of 'Sharikat Termaju Abadi'.

The plaintiff has already obtained judgment against the first defendants and suggests that in those circumstances, the court should treat Hj Mohamad as having admitted the plaintiff's claim. The reason given by the plaintiff for this startling submission is that Hj Mohamad was in partnership with the first defendants, but the plaintiff accepts that that allegation is not admitted or accepted by Hj Mohamad. The court cannot try on this interlocutory application the question of partnership or no partnership, and it is impossible for the court to give judgment on the alleged admission based on this ground. I have seen nothing in the pleadings in this action nor anywhere else which amounts to 'a clear admission of facts in the face of which it is impossible for the party making it to succeed': see *Ellis* v *Allen*[1] per Sargant J at p 909. The alternative ground on which the plaintiff seeks judgment on admissions arises as follows.

The plaintiff says that the buyers jumped the gun by obtaining premature delivery of the cattle, the subject of the contract of sale, from the shipping agents. They did not tender the shipping documents to the shipping agents but nevertheless got hold of the cattle. In those circumstances, says the plaintiff, there was a conversion of the cattle by Hj Mohamad because he was one of those who collected these cattle from the shipping agents without tendering the shipping documents.

The admission here relied on, in relation to the cattle, consists of an indemnity given by Hj Mohamad to the shipping agents. There are two instruments, one showing delivery on 27 July 1987 which applies to some of the cattle and one showing delivery on 4 August 1987 which relates to the remainder. I am prepared, for the purposes of this application, to treat these instruments as evidencing receipt by the consignee, whose signature appears thereon, of the cattle in question; but in no way, as it seems to me, do these instruments constitute the sort of admission on which a judgment on admissions can be obtained.

For this purpose, the admission must be a clear admission of all, and not simply evidence of some, of the facts upon which the plaintiff would have to rely to establish his cause of action. There is no such admission. In these circumstances, I propose to dismiss this application.

Order accordingly.

Solicitors: *David Clidero & Co; DF Abang Zen.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Abdul Rahim bin Hj Ahmad & Ors

HIGH COURT (BANDAR SERI BEGAWAN) – CRIMINAL MOTION NO 6 OF 1988
GODFREY J
27 JUNE 1988

Criminal Procedure – Bail – Application for – Accused charged with rape – Medical report showing complainant may not have been raped – Whether relevant factor in granting bail – Adjournments of hearing – Accused in custody for a considerable time – Whether bail should be granted

The three applicants were arrested and charged with the offence of rape. They were released on bail but were subsequently re-arrested. They applied for bail twice but their applications were refused. This is their third application for bail. In this application, counsel for the applicants pleaded that (a) there had been a change of circumstances since the two unsuccessful applications were heard in that there was now available to the court a medical report showing that the complainant may not have been raped at all; (b) the preliminary inquiry for the case had been delayed for a further six weeks and the applicants had already been in custody for a considerable time (about four months since the date of their re-arrest).

Held, allowing the bail application on terms: (1) It is not for the court to evaluate the medical report. It will be a matter for the trial judge to decide the question whether the intercourse took place with or without the complainant's consent.

(2) Even though the court must be careful to ensure that between the date of an alleged offence of rape and the date of hearing the victim is offered a fair and proper degree of protection, there cannot be such a degree of protection as warrants the incarceration for months of persons who may be innocent of the offence.

(3) Two conditions of the grant of bail are imposed in that the applicants should report once in the morning and once in the evening to the nearest police station and that they do not approach near the premises where the complainant lives.

David Clidero for the three applicants/accused.

Cur Adv Vult

Godfrey J: This is an application for bail. The applicants are three persons accused of the very serious charge of rape. The rape is said to have been committed on 11 January 1988 by the three applicants. They were, on that day, arrested and taken into custody.

On 12 January 1988, they appeared in the magistrate's court. On 13 January 1988, the first applicant was released on bail, and on 19 January 1988, the second and third applicants were released on bail.

On 22 February 1988, they were re-arrested and on 24 February 1988, they were charged with the offence to which I have referred. They applied for bail to Mr Justice Mortimer on 25 February 1988 and their applications were refused. They renewed their applications to Mr Justice Mayo on 16 April 1988 and their applications were again refused.